IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 36 OF 2002.

1. Smt Sheela Naguesh Naik,
2. Shri Amar Naguesh Naik,
3. Smt. Amarpali Amar Naik,
4. Shri Jayaraj Naguesh Naik,
5. Smt. Jayashree Jayraj Naik,
6. Shri Manoj Naguesh Naik,
7. Smt. Manjili Manoj Naik,
8. Shri Deepak Naguesh Naik,
9. Smt. Deepika Deepak Naik,
10. Miss Meghana N. Naik,
11. Miss Sadhana N. Naik,
All legal heirs of late
Naguesh Raya Naik, residents
of Welwado, Poinguinim,
Canacona, Goa. ... Applicants.

Versus

Communidade of Poiguinim,
represented by its Attorney,
having office at Poinguinim,
Canacona, Goa. ... Respondent.

Mr. M.S. Sonak, Advocate for the Applicants.

Mr. S.S. Kantak, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 6th June 2002.

ORAL ORDER.

By consent of parties, this revision is taken up for final disposal at the stage of admission.

2. This revision has been filed by the heirs of party no. 2 in Land Acquisition Case No. 88/91/II pending on the file of the IInd Additional District Judge, South Goa, Margao. This revision has been filed taking exception to the Order passed by the IInd Additional District Judge, South Goa, Margao, dated 8th

November 2001 in the aforesaid Land Acquisition Case.

3. The respondent herein/original party no. 1 in Land Acquisition Case No. 88/91/II filed an application under Order XIII, Rule 2 of the Code of Civil Procedure, Exhibit 26, seeking permission of the Court to produce documents at Serial Nos. a) to g) referred to in paragraph 3 of the said application. In the said application it was also prayed that P.W.1 be re-called for the limited purpose of producing the said documents.

4. The present applicants filed their reply to the aforesaid application and objected to the production of the documents on the ground that no sufficient cause had been shown and three witnesses had already been examined. It was also objected to by the applicants on the ground that the documents sought to be produced were neither listed or referred to in the evidence of the respondent herein and the respondent by producing the documents at item (g), that is, report of the Engineer K.P. Dessai with a plan (sketch), was stated in the reply that the said report was in the nature of an afterthought.

5. The learned IInd Additional District Judge, South Goa, Margao, while allowing the application held

that excepting the report of the Engineer, all the other documents sought to be produced were public documents. The learned IInd Additional District Judge further held that the report of the Engineer could not have been produced by the party no. 1, that is, the respondent herein alongwith the list of documents as this document was prepared subsequently. The learned IInd Additional District Judge further observed that the applicants herein would have ample opportunity to cross-examine the witnesses after which the evidentiary value of the aforesaid report of the Engineer would be decided. The learned IInd Additional District Judge further held that in order to obviate any prejudice which may be caused to the present applicants by allowing the production of the documents, the witnesses, who have been already examined, can be recalled to permit the present applicants to cross-examine them in relation to the documents sought to be produced. Ultimately the learned IInd Additional District Judge allowed the aforesaid application for production of documents with costs of Rs. 500/- with permission to the present applicants to cross-examine the witnesses already examined on these documents.

6. Mr. Sonak, the learned counsel appearing for the applicants, has urged before me that the document at item (g), that is, the report of the Engineer with a

plan is a document which had been prepared subsequently and a party cannot be allowed to produce manufactured documents. In support of his contention he has placed reliance on **Vencu Gopal Tari and others v. Nilconta S. Xete and others**, A.I.R. 1975 Goa, Daman and Diu, 32. In this case the appellants before the High Court had filed certain documents. The said documents were certified copies of public records and had been filed before the parties entered upon their evidence. The plea of the appellants in the above cited Judgment that these documents should be considered was turned down by the learned lower Court on the ground that the documents had to be produced by a witness to be exhibited and the opposite party had to be given a chance to cross-examine him. The learned Judge in paragraph 6 has held thus:-

> "..... and in fact the learned lower Court had conceded that O.13, Civil P.C. did not prevent him from taking the documents on record. Provisions of Order 13 have been enacted to secure a fair trial of the case and not to penalise parties for not producing documents in time. The main object of R. 2, O. 13 is to prevent parties from manufacturing evidence during the trial."

7. Reliance is also placed on **Lachhamandas v. Deep Chand**, A.I.R. 1974 Rajasthan 79 and particularly to the observations in paragraph 18. In Lachhamandas's case (supra) the learned Single Judge of the Rajasthan High Court has held that Rule 2 of Order XIII does not

deal with the production of any document or evidence, which did not exist on the date of the first hearing, but came into existence later. The learned Single Judge thereafter at paragraph 20 has observed thus:-

> "...I should think the Court would be competent in such a situation to take additional evidence provided the other side is afforded adequate opportunity to meet such additional evidence. Therefore, if some important evidence has come into existence subsequent to the closing of the evidence by a party, then the Court is not debarred from taking such additional evidence on record in the interest of justice."

8. Mr. Kantak, the learned counsel appearing for the respondent, has supported the Order of the learned Additional District Judge (IInd), Margao, and has urged that the learned trial Court has granted permission to the applicants herein to recall witnesses for cross-examination pertaining to the documents permitted to be produced by the trial Court. In respect of the document at item (g), that is, the report of the Engineer with plan, it is submitted that the evidentiary value of the aforesaid document would be determined after the parties lead their evidence and the said witness is cross-examined in relation to the said document. According to the learned counsel for the respondent, at this stage, it would be improper to label the said document as manufactured evidence.

9. I have perused the Order of the learned Additional District Judge (IInd) and I do not find that there is any perversity or illegality in the exercise of jurisdiction in permitting the respondent herein to produce the documents. There is no material irregularity in exercise of jurisdiction and the interests of the present applicants have been adequately safe-guarded by permitting them to recall the witnesses for cross-examination.

10. In view of what is stated above, there is no merit in the revision and, therefore, Civil Revision Application is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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